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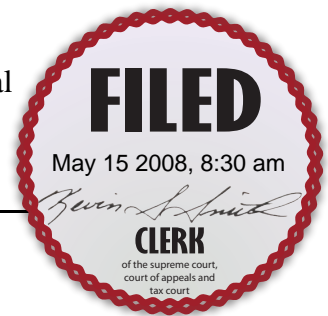
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**IN THE  
COURT OF APPEALS OF INDIANA**

MARVIN CLARK.

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 27A04-0712-CR-741

APPEAL FROM THE GRANT SUPERIOR COURT  
The Honorable Jeffrey Todd, Judge  
Cause No. 27D01-0401-FB-8

**May 15, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-defendant Marvin Clark appeals the revocation of his probation, claiming that the trial court erred in ordering him to serve two years of his previously suspended six-year sentence. Specifically, Clark argues that the trial court abused its discretion because it did not properly articulate the reason for the probation revocation. Finding no error, we affirm the judgment of the trial court.

### FACTS

On November 14, 2005, Clark pleaded guilty to dealing in cocaine, a class B felony. The trial court accepted the plea and imposed a six-year suspended sentence to be served on formal probation.

In June 2006, the Grant County probation department filed a petition to revoke Clark's probation that was based on a new charge of possession of marijuana. Thereafter, on December 20, 2006, the probation department filed an addendum to the notice of violation, alleging that a new charge of battery had also been filed against Clark.

At the revocation hearing that commenced on June 18, 2007, Clark admitted to committing an act of battery for which he was subsequently convicted. As a result, the trial court ordered Clark to serve two years of the previously suspended sentence and commented as follows:

In examining . . . the appropriate sanction in this case, the Court does not find that there is a . . . direct link or relationship between the underlying offense and the Battery offense. I'm not gonna take that into consideration when it comes to disposition. I also take into consideration the fact that, uh, Mr. Clark has . . . willingly acknowledged a problem with . . . anger here in Court, . . . and also because the mental health concerns, I'm not going to grant the State's request for the maximum sentence in this case. I will, however, order the Defendant to serve two (2) years of the previously suspended sentence.

Tr. p. 34-35. Clark now appeals.

### DISCUSSION AND DECISION

In addressing Clark's contention that the trial court abused its discretion in ordering him to serve two years of the originally suspended sentence, we initially observe that probation is a matter of grace and a conditional liberty that is a favor, not a right. Noethlich v. State 676 N.E.2d 1078, 1081 (Ind. Ct. App. 1997). The trial court determines the conditions of probation and may revoke probation if the conditions are violated. Hubbard v. State, 683 N.E.2d 618, 619 (Ind. Ct. App. 1997). The trial court may revoke probation if the probationer commits another crime. Marsh v. State, 818 N.E.2d 143, 148 (Ind. Ct. App. 2004); Ind. Code § 35-38-2-1(b).

We also note that the trial court's sentence following a probation revocation is reviewed for an abuse of discretion. Sanders v. State, 825 N.E.2d 952, 957 (Ind. Ct. App. 2005). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. Guillen v. State, 829 N.E.2d 142, 145 (Ind. Ct. App. 2005). Additionally, in accordance with Indiana Code section 35-38-2-3, if the trial court finds that a probationer has violated a condition of probation, it may order execution of all or part of the sentence that was suspended at the time of initial sentencing.

In this case, Clark admitted to violating his probation by committing an act of battery. Tr. p. 11-13. Although Clark contends that the trial court was not considering that offense in determining what sentence to impose, it is apparent that the trial court was

simply stating that it was not going to aggravate Clark's sentence as a result of the revocation because the battery was not related to the underlying offense of dealing in cocaine. Id. at 34. If anything, the trial court's comments could reasonably be viewed as a mitigator in support of its decision to give Clark less than the entire previously suspended sentence. Put another way, the trial court was implying that it might have imposed a harsher sentence if the new offense had been a reoccurrence of the underlying offense. Therefore, Clark has failed to show that the trial court abused its discretion in ordering him to serve two years following the decision to revoke his probation.

The judgment of the trial court is affirmed.

NAJAM, J., and SHARPNACK, Sr.J., concur.